

be unable to resolve any difficulties. Other incumbents should be permitted to waive the test period by contract.

- PCS providers should not be required to hold a relocated incumbent's spectrum in reserve but should be required to guarantee the incumbent a comparable replacement system. Holding such spectrum in reserve will delay the deployment of PCS systems for at least a full year.
- Incumbents should be required to verify their public safety status to PCS providers if they want to take advantage of the extended negotiation periods. In addition, the definition of public safety entities entitled to extended relocation schedules should be limited to those cases where substantially all of a licensee's communications are related to the protection of life and property.
- PCIA also supports converting to secondary status all incumbent microwave operations remaining in the 2 GHz band as of April 4, 2005. Ten years is sufficient time for all links to be relocated, and PCS operations should then have free use of the band.

PCIA believes that, absent modification of the transition rules, microwave relocation efforts will be substantially frustrated, which will in turn delay the availability of PCS products and services to the public at a cost of \$4 million in consumer welfare per day.³¹ In addition, bids at future PCS auctions will be reduced by applicants in anticipation of having to pay exorbitant premiums above relocation costs in order to clear their spectrum. Meanwhile, Entrepreneur Block licensees will be faced with financial difficulties caused by their inability to relocate links on a timely basis at a reasonable cost and to turn on their systems until those links are relocated.

PCIA submits that, contrary to the contentions of the Industrial Telecommunications

³¹ Letter from Mark Golden of PCIA to Chairman Reed Hundt, RM-8643 at Attachment F (filed Sept. 22, 1995) (Estimate of Losses to Government and Consumers Resulting from Microwave Relocation Rules by Professor Paul Milgrom, Stanford University).

Association, the FCC will be establishing an intolerable precedent here if it fails to modify the relocation rules.³² As the FCC begins the process of accommodating emerging technologies and promoting the more efficient use of spectrum, it is hard to imagine a more damaging example than allowing incumbent users to demand excessive pay-offs above their actual relocation costs to relocate to new spectrum.

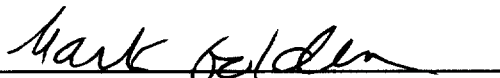
³² See ITA at 5-6.

VI. CONCLUSION

PCIA is pleased at the Commission's reliance on its recommendations in developing a cost sharing plan and in improving the transition rules. PCIA and its members have spent considerable time and resources studying the problems facing the rapid deployment of PCS and believe that adoption of the Commission's proposals in this proceeding, as modified by PCIA, will both facilitate the roll out of PCS and provide full protection to incumbent microwave operators. In addition, PCIA is continuing its study of the cost sharing clearinghouse and is prepared accept that responsibility at any time. The Commission has done an excellent job in rapidly responding to the PCS industry's needs and expedited adoption of the rules proposed in the Notice with the consensus modifications described above would serve the public interest.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

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January 11, 1996

APPENDIX A

APPENDIX A

The following instances of abuse of the relocation rules are compiled from the comments submitted to the Commission in this proceeding on November 30, 1995.

- In exchange for the 2 GHz frequencies, the Suffolk County Police Department requested a total digital microwave upgrade which includes all enhancements. The County also requested additional revenue of \$18 million "as an inducement to consummate this negotiation in a timely manner."
- The PCS licensee surveyed the incumbent's 1.9 GHz system and an equipment manufacturer quoted a relocation price of \$225,000 per link, including an upgrade of equipment. The incumbent demanded \$400,000 in cash for each relocated link, which is in excess of 70% above actual relocation cost. The PCS licensee's negotiator took the incumbent's demand back to the licensee for consideration.

During the interim, the incumbent attended a seminar on the "value" of these frequencies to PCS licensees. The incumbent then rescinded its \$400,000 offer and stated that it would not take less than \$1,200,000 per link. This would put the total demanded by the incumbent to relocate twelve links at \$15,600,000. That is \$12,900,000 more than, or almost five times, the actual cost to relocate the links.

- An incumbent, a municipality, has engaged a law firm to negotiate microwave relocations with PCS licensees on the incumbent's behalf. Without regard to the underlying systems or the actual costs of relocation, the incumbent's negotiators demand \$1,000,000 per link.

The incumbent itself stated that it has a right to get "whatever it can when it sells its assets." When confronted with the fact that its citizens will have to pay more for PCS services (and more for cellular services since PCS will be less competitive) the incumbent also stated, "that's why we like this - it's a hidden tax."

- One PCS licensee noted that, although fewer than one-third of the incumbents with whom it must negotiate are causing difficulties, these few account for nearly two-thirds of the links which the PCS licensee must relocate.
- A PCS licensee has been negotiating with an incumbent since April 1995. The incumbent has the second largest network that is fully contained within the licensee's market. The incumbent initially asked for a Sonet replacement system which is well beyond what could be considered a comparable replacement. Recently, the incumbent has included in its requirements that the PCS licensee also relocate the incumbent's 6 GHz analog links. Additionally,

the incumbent is one of two incumbents that has not permitted site surveys and due diligence review of its network, thus preventing the PCS licensee from determining what would constitute a comparable system.

- A PCS licensee is negotiating with a non-public safety incumbent which has the largest network requiring relocation in the PCS licensee's market area. The incumbent has stated that, if the PCS licensee wants to relocate the link prior to the end of the voluntary and mandatory negotiation periods, the PCS licensee will have to pay for an aerial fiber replacement system. The incumbent has retained two consultants to assist in the negotiations.
- The incumbent's system is a large multi-link, multi-MTA system in the PCS band with additional links in the 2.1 GHz band. Ten of its "PCS band" links are within the PCS licensee's market, but only one is co-channel to the PCS licensee. The incumbent's position is that the more links a PCS licensee is willing to relocate, the better the per link cost. It is also seeking reimbursement for links in the 2.1 GHz band which are not included in the PCS spectrum. The incumbent has stated that if a PCS licensee wants it to relocate prior to the three-year FCC stated timeframe, a premium would be required.
- The incumbent is a public safety entity and is aware of the leverage that this position affords it. Currently it has a 600 channel analog system which is operating at two-thirds of its capacity. To relocate prior to the expiration of the three-year voluntary and two-year mandatory period, the incumbent is demanding that the PCS licensee provide it with a DS3, 6 GHz replacement system. A sixteen T-1 digital replacement system, which is a considerable upgrade, would be approximately one-half the cost of the requested DS3 system.
- The incumbent, a governmental entity, has four analog links which the PCS licensee needs to relocate. The PCS licensee determined that the cost of providing comparable systems is \$760,000. The incumbent has stated that it would like a cash payment, and it will do the relocation on its own. The PCS licensee offered \$800,000 for the relocation of all four links. The incumbent refused twice to make a counter offer. Later, the incumbent informed the PCS licensee that it would like \$1,000,000 for each relocated link (a total of \$4 million) and payment of its consulting fees of \$250,000.
- The incumbent is a utility company which has twenty-two links, twenty-one of which are analog systems ranging from 132-480 channels. The PCS licensee estimated relocation costs at \$4 million. At the first meeting, the incumbent requested \$22 million to relocate its network. The incumbent based its request on the book value recovery, replacement value, territorial value, and speed of

relocation. In addition, the incumbent added in the cost of relocating several links in the network that the PCS licensee will not need to relocate. The incumbent has also requested that the PCS licensee pay its consultant costs.

- One PCS auction winner has been asked to participate in a venture which plans to buy the relocation rights to microwave links in the 2 GHz band and then resell the rights to PCS providers.
- Certain consultants and attorneys are charging incumbents significant sums for advice on how to extract premiums well beyond the costs of relocation from PCS licensees. For example, the City of San Diego, an incumbent in the 2 GHz spectrum, signed a contract for \$180,000 for consulting services. As part of their services, the consultants will determine, "[t]he net profitability of each market to the wireless providers," as well as an analysis of each PCS licensee on the basis of capitalization, spectrum auction bid, business experience, and other factors, all of which are largely irrelevant to the issue of providing the incumbent with comparable facilities.
- Both law firms and consulting organizations have distributed information packets for incumbents, one of which states that "[t]he issue of 'comparable facilities' has almost nothing to do with [the voluntary] phase of the negotiations." In one instance, through materials entitled, "Important Information for All 2 GHz Licensees: Big Money and Your 2 GHz Microwave Band Relocation," UTC alleged that PCS licensees will lose \$5,000,000 per month of delay in implementing their systems.
- Incumbent has a twenty-link network and the two PCS licensees have identified nine links with co-channel interference. The Incumbent has requested that its entire network be upgraded from existing analog to digital, including the required new digital channel multiplexers and a new simulcast system that would be integrated into the new all digital network. The Incumbent also stated that it is looking at a four-year process to complete the network upgrade. A preliminary estimate to upgrade their system is around \$17 million. The actual cost to relocate only the potentially interfering links is approximately \$1.5 million for an analog solution.
- Incumbent wants a cash buyout of 34 analog links and one digital link. The Incumbent wants compensation for 5 links that were relocated in 1993 and for 4 links that will not interfere, but are part of its network. This Incumbent initially valued its links at \$1,200,000 per link if relocated by 12/31/95 and \$1,000,000 per link if relocated by 3/31/96. In a subsequent meeting, the Incumbent reduced the cost per link to \$347,000 (within this cost per link are two very

questionable elements: \$55,000 per link for overload costs and \$60,000 per link for undepreciated book value). At the Incumbent's rate, the total cost to buyout 35 links is \$12,145,000. The Incumbent's request will require the PCS licensee to pay a premium of \$6.9 million (assuming relocation of 38 links at \$347,000 per link). The PCS licensees will interfere with only 29 links and estimates a cost of \$5,200,000 (\$179,300/link) to relocate these 29 links.

- Incumbent has 14 links (1 digital and 13 analog) that the PCS licensee will need to relocate. The Incumbent's total system is comprised of 20 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at \$2,800,000 (\$200,000 per link). The Incumbent wants an upgrade of all 20 links to digital at no cost to the Incumbent, the resolution of any technical issues associated with its simulcast, as well as the absorption of all costs required to modify their simulcast network. The Incumbent claims a cost of at least \$10 million to relocate and upgrade the 20 links, not including any simulcast costs. The Incumbent's proposed would require the PCS licensee to pay a premium of over \$7 million.
- Incumbent has 4 analog links that will interfere with the PCS licensee's system. The PCS licensee estimates the cost to relocate the 4 links on a comparable basis at \$760,000 (\$190,000 per link). The Incumbent, after retaining a consulting firm to represent them in any negotiations, wants a cash buyout of its facilities and will coordinate relocation. At the first meeting with the Incumbent and its agent, the PCS licensee made an offer of \$800,000 to relocate the 4 links. The Incumbent representative rejected the offer because he did not consider it a "bonafide offer." Neither the agent nor the Incumbent would divulge the amount of money required to relocate their links. At the second meeting, the PCS licensee again requested from the Incumbent the amount of money that it was demanding for its 4 links. The Incumbent indicated that it was not prepared to respond at that time. In a subsequent telephone conversation, the Incumbent's agent indicated that the Incumbent required \$4-5 million compensation and that the Incumbent wants the PCS licensee to pay all consultant costs (\$250,000). The Incumbent's request would require the PCS licensee to pay a premium of \$3-4 million.
- Incumbent claims to have 8 links working, but the PCS licensee discovered that 4 links are not in service. The PCS licensee estimates the cost to relocate to comparable facilities at \$1,500,000 for 8 links (\$187,500 per link) and \$750,000 for 4 links. The Incumbent wants a cash buyout and will coordinate its own relocation. Initially, the Incumbent was unwilling to meet with the PCS licensee. After numerous calls and a letter, the Incumbent finally agreed to meet. The Incumbent indicated that its 8 links were worth between \$400,000-

\$600,000 per link and refused to accept a lower offer. Assuming a price of \$500,000 per link, the cost to relocate the Incumbent's 8 links would be \$4,000,000. The Incumbent would also require the PCS licensee to pay a premium of \$3,250,000.

- Incumbent is asking for cash. It wants \$1 million per link. The analog replacement for the interfering links is estimated at \$200,000 per link.
- The PCS licensee has identified 8 analog microwave links for relocation in one MTA and 3 analog microwave links in a second MTA. The Incumbent has refused to allow site visits or to provide any site or system information not already available in the public domain. The Incumbent indicated that it wished to negotiate a cash settlement for the relocation and that it would engineer and price the replacement system. Based on limited Incumbent system information, the PCS licensee estimates the cost for a 6 GHz replacement system at \$1.2 million for 11 links (\$109,091 per link) and presented this to the Incumbent. This proposal was contingent on the Incumbent clearing 5 links by year-end 1995. The Incumbent countered with a proposal of \$9 million for 14 links, based on 5 links being fully attributable to the PCS licensee and 9 links with costs shared in some manner between the PCS licensee and the Incumbent. The Incumbent's price includes links which have not been identified as subject to interference. In addition, the Incumbent proposed a one-year schedule for replacement with a \$500,000 bonus to be paid by the PCS licensee for each month, or part thereof, for earlier completion. The Incumbent promised, but has not yet provided, details on the existing systems and a breakdown of its buy-out price. The Incumbent's lack of cooperation has resulted in delay to replacement system negotiation.
- The Incumbent, a public utility cooperative, has a system comprised of 78 paths of which 25 are 2 GHz and 25 are 6 GHz. The PCS licensee offered to relocate 2 of the 25 paths in the 2 GHz band. The Incumbent has indicated that it wants to coordinate relocation of all 78 paths, changing complete routes rather than one path at a time, as well as upgrading all paths to digital. The Incumbent expects the PCS licensee to pay for its entire system relocation and the upgrade. The Incumbent has indicated that it wants to negotiate the relocation and upgrade to digital of all paths prior to proceeding any further and will not allow site surveys until negotiations have begun. If negotiations are not satisfactory, the Incumbent will turn negotiations over to UTC.
- Incumbent has 14 links (11 digital, 3 analog) with which the PCS system will interfere. The Incumbent's total system is comprised of 23 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at

\$2,800,000 (\$200,000 per link). The Incumbent wants its entire network (all 23 links) upgraded to digital at no cost to the Incumbent and wants the PCS licensee to pay for outside consultant costs to evaluate the PCS licensee's offer. The Incumbent estimates the cost to upgrade its entire system at \$4,600,000 and will require the PCS licensee to pay a premium of \$1.8 million.

- Incumbent has requested that the three PCS licensees operating in its spectrum buy its entire twenty-seven link network, even though there are only fourteen links which have the potential for co-channel interference. The amount of compensation it seeks is to be the cost to entirely replace and upgrade the system to digital plus an undetermined "incentive multiplier."
- The Incumbent, a municipality, has a system comprised of 12 paths, seven of which are in the 2 GHz band. The PCS licensee has offered to relocate services for two of these paths. The Incumbent's system is used for public safety and city administrative communications. It carries traffic to three remote radio sites. It plans to simulcast and upgrade to digital. The Incumbent has dark fiber already in place, which may be part of the upgrade. The Incumbent is also talking to other Incumbents to see what they are doing and has suggested that it will drag out negotiations for the full time allocation unless it gets what it wants. The Incumbent has also indicated that it will probably hire consultants to represent it in negotiations. The Incumbent is looking for complete replacement of its existing system with a hybrid radio-fiber digital system while maintaining system integrity. The Incumbent will try to get the PCS licensees to pay for the entire upgrade and is very aware of the PCS auction and "their rights" as defined by the FCC.
- The PCS licensee has submitted a contract for the relocation of eleven of the Incumbent's twelve 2 GHz paths using 6 GHz analog radios (the last path is a path that another PCS licensee is interested in). The Incumbent, a municipality, is unwilling to accept this like for like offer. The Incumbent stated that it views the PCS relocation issue as a substantial opportunity for receiving a digital upgrade at the expense of the PCS licensees. The Incumbent also stated that it had nothing to lose by holding out up to the full 5 year period for a complete systemic digital upgrade. The Incumbent stated that it did not have a particular vendor preference, but that it is seeking at least a DS3 capacity replacement system. The Incumbent added that it was broke and would not be able to offer any money towards the purchase of the proposed digital system. The Incumbent stated that it felt that the PCS licensee would ultimately offer it a digital replacement system, because of the timeline and the Incumbent's willingness to hold out for five years. The Incumbent stated that it preferred to have a single

relocation, but does not mind having separate relocation agreements with the two PCS licensees involved.

- Incumbent has seven links in the 2 GHz band, two of which has been identified by the PCS licensees for relocation. The Incumbent will not permit site inspections based on the argument that they "... do not appear appropriate or necessary for negotiations conducted during the voluntary negotiation period." The Incumbent further argues "... that determining the cost of comparable facilities is, in our view, relevant during the involuntary negotiation period." In addition, the Incumbent wants to have its seven links addressed instead of only the two links identified as interfering, and wants digital replacement for existing analog systems.
- At the initial meeting between the Incumbent, a public utility company, and the PCS licensee, the PCS licensee said that it was interested in 4 paths (a request for a 5th path has been added since this meeting). The Incumbent stated that it was willing to negotiate for the relocation of the affected paths and that it would accept a cash payment to migrate two of the paths onto its fiber system. For the remaining two paths, the Incumbent expects to receive compensation equal to the cost of a digital upgrade. It also expects compensation for any additional paths impacted by the digital upgrade. The PCS licensee would have the choice of migrating the additionally affected paths to digital, or paying for the additional back-to-back channel banks needed for the digital to analog transition. The Incumbent stated that it would receive "comparable" compensation from the PCS licensee at the end of the 3 year negotiating period and therefore it "deserved" a premium for the early relocation of their system. The Incumbent also stated that it would not consider analog replacement because it has a long term plan to eventually migrate to digital and added that it currently had no money budgeted to pay the difference between an analog and digital replacement system. The Incumbent stated that it was particularly concerned with potential downtime, and that it would insist on a hot cutover. It also stated a preference to replace the current radios with SONET digital radios. The Incumbent stated that it could meet the PCS licensee's timeline if the price was right.
- The Incumbent, a commercial enterprise, has a system that is comprised of 159 paths (Incumbent says there are less than half that number). Twenty-seven of these paths are analog 2 GHz. The PCS licensee has identified two paths of interest (other PCS licensees have identified a total of 11 paths of interest although these were not yet disclosed). The Incumbent is only interested in a systemic relocation and indicated that if the offer was nothing more than a comparable replacement, then the next negotiation meeting would be a very short one. Once a contract is signed, the Incumbent said that it could migrate

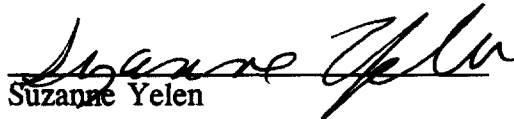
the system within 90-180 days. In exchange for its early relocation, the Incumbent wants a cash incentive to move, otherwise it will hold out until the involuntary relocation period. The Incumbent would not articulate the amount of compensation it was looking for, but said it would be willing to entertain offers of resources other than cash if that was of interest to the PCS licensees. The PCS licensee raised a concern regarding the Incumbent's ability to relocate 27 paths to microwave facilities in such a short timeline. The Incumbent did indicate that on some paths it would be looking for microwave, but that many paths would utilize other facilities. It is the PCS licensee's feeling that the Incumbent is most likely looking to get out of microwave. Several years ago, the Incumbent put the system up for sale. When it realized that there was money to be made through microwave relocation, it took the system off the market. Once the Incumbent sells the frequencies, it will most likely sell the sites and equipment. The Incumbent is interested in other sources of ongoing revenue and very open to discussing co-location with any PCS licensee.

- Incumbent is seeking compensation of \$500,000 for two links located in the 2 GHz band but not carrying any traffic. Since the links are idle, there is no potential interference and the FCC should cancel the license. No compensation should be demanded where there is no true "incumbent."
- Incumbent is in possession of one microwave link that will need to be relocated. Incumbent wants to negotiate a cash settlement for this microwave link even though it was taken out of service in 1994 as part of an office downsizing. The PCS licensee asked the Incumbent to send a copy of the letter that it sent to the FCC advising that the system had been taken out of service and that it had, in fact, relinquished the frequencies. The PCS licensee has followed up with the Incumbent via facsimile on numerous occasions requesting this written confirmation, but has not received any response to its request. As a result, there is no indication that the Incumbent had ever sent a letter to the FCC.
- One PCS licensee is negotiating with 14 incumbents with a total of 102 microwave links. Although only four of the incumbents are being difficult, they have 65 links, accounting for almost two-thirds of the links that need to be relocated.
- In order to deploy its system, one link belonging to a large incumbent network must be relocated. The incumbent has stated that it will not relocate that one link until it receives a full digital replacement system for the entire network.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 1996, I caused a copy of the foregoing **"Reply Comments of the Personal Communications Industry Association"** to be sent via hand delivery to the following:

International Transcripts Services
2100 M Street, N.W.
Washington, D.C. 20037


Suzanne Yelen